

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
(South San Francisco, California)

LOTUS HOSPITALITY, INC. d/b/a
HOLIDAY INN AIRPORT NORTH 1/

Employer

and

SEAN SALERA, An Individual

Petitioner

and

FREIGHT CHECKERS, CLERICAL EMPLOYEES
AND HELPERS UNION LOCAL NO. 856,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS 2/

Union

Case 20-RD-2395

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, 3/ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 4/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 5/
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 6/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 7/

All full-time and regular part-time employees including front desk agents, employed by the Employer at its 275 South Airport Boulevard, South San Francisco, California facility, performing work covered under the February 1, 2000 - June 30, 2004, collective-bargaining agreement between Lotus Hospitality, Inc. d/b/a Holiday Inn Airport North and the Union; excluding all other employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are

employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **FREIGHT CHECKERS, CLERICAL EMPLOYEES AND HELPERS UNION LOCAL NO. 856, INTERNATIONAL BROTHERHOOD OF TEAMSTERS.**

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB. Wyman-Gordan Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. **North Macon Health Care Facility**, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before August 13, 2004. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by August 20, 2004.

Dated August 6, 2004

at San Francisco, California

/s/ Robert H. Miller
Regional Director, Region 20

- 1/ The Employer's name is in accord with the joint stipulation of the parties.
- 2/ The Union's name is in accord with the joint stipulation of the parties.
- 3/ Following the close of hearing, the parties executed a joint stipulation wherein they agreed that the record herein should be reopened and the joint stipulation received in to the record as Joint Exhibit 1. I hereby include Joint Exhibit 1 in the record of this proceeding and my findings herein are in accord with the contents of that stipulation.
- 4/ The parties stipulated, and I find, that the Employer is a California corporation engaged in the business of operating hotels and is the owner/operator of the Holiday Inn Airport North (herein also called the Hotel), which is located at 275 South Airport Boulevard, South San Francisco, California 94080. The parties further stipulated, and I find, that the Employer commenced operating the Hotel on December 31, 2003, and based on a projection of its operations since that time, it will annually derive gross revenue in excess of \$500,000, and during the same period, it will purchase and receive at its Hotel, products, goods and materials valued in excess of \$5,000, which will have originated from points outside the State of California. Based on the parties' stipulation to such facts, it is concluded that the Employer is engaged in commerce and that it will effectuate the purposes and policies of the Act to assert jurisdiction in this matter.
- 5/ The parties stipulated, and I find, that the Union is a labor organization within the meaning of the Act.
- 6/ The parties stipulated, and I find, that there is no contract bar to this proceeding.
- 7/ The Petitioner seeks to have a decertification election conducted in the unit of employees represented by the Union under a collective-bargaining agreement (herein the Agreement) between the Union and Wyndham International d/b/a Ramada Inn North and Holiday Inn, effective from February 1, 2000, to and including June 30, 2004. Employer Chief Executive Officer Jay Singh testified that the Employer acquired the Hotel on December 30, 2003, and agreed to be bound by the Agreement by letter dated February 19, 2004, a copy of which is signed by Singh and included in the record.

The unit covered by the terms of the Agreement includes employees in the following classifications at the Hotel: PBX operator, file clerk, typist clerk, food and beverage clerk, reservation clerk, front office clerk, billing clerk, A/R clerk, ledger clerk, A/P clerk, payroll clerk, night auditor, general cashier and secretary paymaster.

Singh testified that the front office clerk, reservation clerk and night auditor classifications have all been merged into one classification called "front desk

agent” and that, at the time of the hearing, the Employer employed approximately four employees in this classification.

With regard to the reservation clerk classification, Singh testified that the predecessor employer, Wyndham International, had centralized the handling of the reservations functions for the Hotel through an entity called Intercontinental Hotels, and that the reservations function was being performed offsite at the time the Employer purchased the Hotel in December 2003. Singh testified that the Employer has continued to use the same offsite reservations service since acquiring the Hotel, that very few reservations are handled at the Hotel, and they were being handled by the front desk clerks.

Singh further testified that the Employer employs no PBX operators, ledger clerks, file clerks, typist clerks, food and beverage clerks, billing clerks or general cashiers or secretaries. According to Singh, the Employer uses an outside entity to handle its accounts payable/billing clerk functions and no unit employees were handling these functions at the time of the hearing. Singh further testified that his wife was handling the duties of the accounts receivable clerk and the Employer employed no other accounts receivable clerks.

Analysis. The Petitioner seeks a decertification election in the contractual unit and the Union takes the position that despite the testimony of the Employer’s Chief Executive Officer (CEO) regarding changes in the unit, the unit description for purposes of the election should be coextensive with the contractual unit. The Employer has taken no position on this issue other than that which can be discerned from the testimony of its CEO regarding the changes in the unit.

It is well established that the unit in a decertification election must be coextensive with the certified or recognized unit. *Campbell’s Soup Co.*, 111 NLRB 234 (1955). However, in the instant case, the Employer’s CEO has testified that the only job classification that the Employer currently employs is that of front desk agent, and that except for the accounts receivable clerk, the work of the other classifications described in the collective-bargaining agreement no longer exists or is being performed by the front desk agents. According to CEO Singh, the job duties of the accounts receivable clerk are being handled by his wife. In these circumstances, it appears that the way to achieve the maximum opportunity for voter participation in the election directed herein is to describe the unit as employees performing work covered under the Agreement and include the classification of front desk agent, as this classification now performs the work of the front office clerk, reservation clerk and night auditor position, all of which were classifications included in the Agreement.